

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:07-cr-38**

UNITED STATES OF AMERICA,)	
)	
Vs.)	ORDER
)	
JAIME GAMEZ,)	
)	
Defendant.)	
_____)	

THIS CAUSE coming on to be heard and being heard before the undersigned pursuant to a motion filed by the defendant on September 9, 2007 entitled, "Motion for Modification of Detention Order" (#28) in which the defendant requested that the undersigned reconsider the issue of the defendant's detention and release the defendant based upon a change of condition as set forth under 18 U.S.C. § 3142(f)(2). It appearing to the court at the call of this matter on for hearing that the defendant was present with his attorney, Tony E. Rollman and that the Government was present through Assistant United States Attorney Jill Rose and from the evidence offered, the court makes the following findings.

Findings: In the bill of indictment that was filed on April 3, 2007 the defendant was charged with possessing methamphetamine with the intent to distribute in violation of 21 U.S.C. § 841(a) and 841(b)(1)(c). The defendant was also charged with possession of a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A)(I). The defendant was released on terms and conditions of pretrial release by the undersigned on April 30, 2007. After the entry of the order releasing the defendant the defendant entered

a plea of guilty to the charge of possession of methamphetamine with intent to distribute. On August 17, 2007 the undersigned, at the request of the United States Probation Office, modified the terms and conditions of pretrial release of the defendant by removing the condition of home detention. Thereafter, a violation report was filed on August 28, 2007 alleging that the defendant had violated terms and conditions of his pretrial release and that he had tested positive for the use of controlled substances.

A hearing was held in regard to the violation report and pursuant to the evidence presented at that hearing, on September 7, 2007, the undersigned entered an Order (#26) revoking the unsecured bond and the terms and conditions of pretrial release.

Discussion. The defendant has presented his motion, pursuant to 18 U.S.C. § 3142(f)(2). It is the opinion of the undersigned that the applicable statute is 18 U.S.C. § 3143(a)(2). The defendant has entered a plea of guilty to an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act, 21 U.S.C. § 801. Pursuant to 18 U.S.C. § 3143(a)(2), the defendant must be detained unless:

(A)(i) the judicial officer finds there is substantial likelihood that a motion for acquittal or new trial will be granted;

(2)(i) an attorney for the Government has recommended that no sentence of imprisonment be imposed on the person; or

(B) the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community.

The undersigned cannot find that there is a substantial likelihood that a motion for acquittal or new trial will be granted in this matter. The defendant has already entered a plea

of guilty in this matter and thus the likelihood that a motion for acquittal or new trial will be granted is infinitesimal. Ms. Rose, the Assistant United States Attorney in this matter, has stated that the Government is not recommending that no sentence of imprisonment be imposed on the defendant. This court cannot find by clear and convincing evidence that the defendant is no likely to flee or pose a danger to the safety of any other person or the community. Indeed, the defendant is likely to pose a danger to the safety of any other person or the community in that he has been actively using controlled substances as shown by recent testing.

Based upon the foregoing statute, the undersigned cannot grant the motion of the defendant to be released.

ORDER

WHEREFORE, IT IS **ORDERED** that the motion of the defendant entitled "Motion for Modification of Detention Order (#28) is hereby **DENIED** and that the defendant continue to be detained pending further orders of the court.

Signed: September 25, 2007

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Dennis L. Howell
United States Magistrate Judge

